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Summary of Stakeholders' submissions on Tonga*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of four stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations[2] and cooperation with international human rights mechanisms and bodies[3]

2. The Tonga Civil Society Organisation - Human Rights Task Force (Joint Submission 1, JS1), noted that Tonga had ratified only a few of the core human rights conventions – the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC) – and had become a signatory to the Convention on the Rights of Persons with Disabilities (CRPD).[4]

3. JS1 highlighted that Tonga had not ratified the following instruments: the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its Optional Protocol; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant

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on Civil and Political Rights (ICCPR) and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), and the Optional Protocols to CRC.[5]

4. Furthermore, JS1 noted with concern that since the last universal periodic review in 2012, Tonga had failed to make positive steps towards the ratification of the above-mentioned instruments. JS1 called on Tonga to immediately ratify CEDAW, CAT and CRPD, consider ratifying the other human rights instruments to which Tonga is not a party, and fulfil its commitment to reporting on CRC and CERD and to work towards developing implementation plans for CRC, CERD, CEDAW and CRPD.[6]

5. JS1 noted that Tonga had become a member of the International Labour Organisation (ILO) in February 2016, and recommended that it ratify the eight fundamental ILO Conventions.[7]

6. JS1 recommended that Tonga accede to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[8]

7. JS1 reported that in 2015, the Government of Tonga had stated at the 59th session of the Commission on the Status of Women in New York that it was ready to commence the process of ratifying CEDAW. However, a decision by the King in Privy Council put on hold the process, claiming that the decision of the Government to ratify CEDAW contradicted Clause 39 of the Constitution, which stipulated that only the King could make treaties. In this regard, JS1 underscored that a judicial review was needed to clarify such claim in order for the Government to move forward with the ratification of CEDAW.[9]

8. JS1 noted that Tonga had committed itself to the following international and regional gender equality conventions and agreements: the Beijing Platform for Action of Women (1995); the Commonwealth Plan of Action for Gender Equality (2005-2015); the Revised Pacific Platform of Action for Gender Equality (2005-2015); the Pacific Leaders Gender Equality Declaration (2012); and the Sustainable Development Goals (2015-2030).[10]

B. National human rights framework[11]

9. JS1 noted that the 2014 General Election recorded a milestone in Tonga's political history. The country had witnessed the swearing in of its first Prime Minister who was elected from among the representatives of the people.[12] Following the adoption in 2010 of a democratic reform to its political structure, the Parliament comprised 17 members elected by the people and nine nobles elected by their peers. JS1 claimed that the retention of seats for the nobles was undemocratic and facilitated the manipulation of power. It also mentioned that the nobles received a yearly remuneration taken from the taxpayers' money, but with no clear job description. JS1 called on the Government to consider reviewing the nine seats reserved for the nobles and amending the law to allow the people to elect the nobles rather than the nobles electing their own representatives, as they only represent a minority of the population. It also called on the Government to consider abolishing the remuneration package assigned for the nobles.[13]

10. JS1 underscored that in Tonga, there was neither a human rights institution, nor a national body tasked with monitoring and documenting human rights violations. It highlighted the importance of having such a national institution that could act as a coordination body overseeing all human rights issues within the country, as well as helping to closely monitor UPR recommendations. It supported the idea of establishing a national human rights institution that operated independently and would allow the sharing of expertise and resources with other international human rights agencies and governments.

Therefore, JS1 recommended that the Government prioritize the establishment of a national human rights institution.[14]

11. JS1 stated that the Constitution of Tonga prohibited discrimination based on class, religion, race, but it did not recognize discrimination based on gender. It added that the National Policy on Gender and Development had been formulated in 2001 and was revised in 2014, but it faced the common challenge of budget constraints that limited the capacity of implementation. JS1 recommended that gender be included as a ground to prohibit discrimination in the Constitution of Tonga, and that gender equality be prioritized within the Tonga Strategic Development Framework along with adequate budget commitments.[15]

12. JS1 noted that there were increasing concerns that the Government of Tonga and its line ministries had not consolidated a commitment to provide human rights training for public officials. It recommended that State officials, in particular the senior police and army personnel, be provided with such training. JS1 also recommended that church leaders, who could play a critical role in advancing human rights in the country, be similarly trained on human rights. JS1 stated that there was an increasing demand for human rights training with recognition of the key role played by its members in providing human rights training as part of their mandates.[16]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination[17]

13. JS1 stressed that the legal age of majority for the nobles was 21, while it was 18 for the King. However, there was no mention of an age of majority for Tongans in general. JS1 called on the Government to set the age of majority for all Tongans to 18, recalling that the Committee on the Rights of the Child defined all under the age of 18 as children.[18]

14. JS1 noted that there were increasing concerns of bullying suffered by Lesbian, Gay, Bisexual and Transgender (LGBT) students in schools and within their own families. The Ministry of Education, as well as other line Ministries, were reportedly usually hesitant to implement any policy or measures to promote and protect the human rights of LGBT students. JS1 recommended that Tonga make readily available information on LGBT to students in all schools in Tonga. It also recommended that Tonga enforce anti-bullying measures to protect LGBT students as it considered that it was as much a priority as any other issue.[19]

Development, the environment, and business and human rights[20]

15. JS1 stated that since the last review, the implementation of the Anti-Corruption Act, passed in 2007 and which authorized the establishment of an Anti-corruption Commission to deal with corruption in Government, had been delayed with attention diverted to establishing the Parliamentary Anti-Corruption Standing Committee. JS1 recommended that the Government implement the Anti-Corruption Act and ensure that the Anti-Corruption Commission was independent from the Government.[21]

2. Civil and political rights

Right to life, liberty and security of person[22]

16. CRIN noted that child offenders might be sentenced to capital punishment. The Criminal Offences Act 1926 provided for death penalty for treason and murder. Pregnant women convicted of a capital offence should be sentenced to life imprisonment in lieu of capital punishment. In the case of murder, the death sentence could not be applied to any person under the age of 15. CRIN stressed that it was not clear whether this limit applied to the age at the time of the offence or at the time of sentencing. No age restriction applied in the case of treason.[23] CRIN noted that no executions had been carried out in the country since 1982. Sentencing for murder had been considered by the Supreme Court in 2005, though not specifically in relation to child offenders. The Court concluded that the norm for sentencing should be life imprisonment, with capital punishment reserved for especially heinous crimes.[24] CRIN recommended that Tonga explicitly prohibit the death penalty for offences committed by persons under the age of 18.[25] JS1 raised similar concerns.[26]

17. CRIN reported that the Criminal Offences Act provided for life imprisonment for offences relating to the demolition of buildings, murder and inciting or assisting suicide, and that no limitations existed in relation to the age of the offender. Any person under the age of 15 who would be sentenced to death for murder should be sentenced to be "detained during His Majesty's pleasure".[27] CRIN recommended that Tonga explicitly prohibit life imprisonment for offences committed by persons under the age of 18, and amend the sentence of any person currently serving a sentence of life imprisonment or detention during His Majesty's pleasure for an offence committed while they were a child.[28]

18. CRIN noted that corporal punishment in the form of whipping was lawful as a sentence for males under the Criminal Offences Act. Boys under 16 might be whipped up to 20 strokes, and older males might be whipped up to 26 strokes. The punishment should be administered in one or two instalments, as specified by the Court, and should be inflicted by the gaoler in the presence of a magistrate, following certification that the offender was medically fit to undergo the punishment. CRIN added that for males convicted of certain sexual offences, theft or robbery, whipping might be ordered at the discretion of the Court in lieu of or in addition to imprisonment. For boys under 16, whipping might be ordered in lieu of imprisonment for certain sexual offences. It also stated that the Magistrates' Courts Act allowed a magistrate to impose whipping on a boy aged seven to 14 in lieu of any other punishment, to be administered in one or two instalments, not exceeding 10 strokes each.[29] CRIN noted that in 2010, the Appeal Court had overturned sentences of judicial whipping imposed on two 17 year olds and noted that this was the first time sentences of whipping had been handed down in 30 years.[30] CRIN recommended that Tonga explicitly prohibit all forms of corporal punishment for offences committed by persons under the age of 18.[31]

19. JS1 made some similar observations in relation to corporal punishment, adding that the Evidence Act stated that any male child could be whipped if he had wilfully given false unsworn evidence to a court; that the Manufacture of Intoxicating Liquor Act stipulated that a maximum of 10 strokes could be given to any male under the age of 18 found guilty of unlicensed intoxicating liquor; that the Order in Public Places Act provided that if any male under the age of 14 was found after 8.30 p.m. in any public amusement or public place of any kind and was without an adult guardian or parent, he might be whipped, and males under the age of 16 might also be whipped if convicted for smoking tobacco, drinking kava or was spotted in any public billiard saloon; and that the Town Regulations Act stated that any able-bodied male older than 16 years might be liable to be whipped if the police saw that he was unemployed, did not have a plantation, and had no means to support those who depended on him.[32] JS1 recommended that Tonga review all legislation that impose punishments amounting to torture as they contravene the CRC.[33]

20. The Global Initiative to End All Corporal Punishment for Children (GIEACPC) noted that Tonga had received several recommendations to prohibit corporal punishment as a sentence of the courts. The Government accepted one recommendation to "abolish any statutory provision which authorizes corporal punishment, in particular when the convicted is a child". GIEACPC stressed that since the previous review, no legal reform had been initiated, and that the Government had defended the legality of corporal punishment as a judicial sanction "as a deterrent". It stated that corporal punishment of children was lawful at home, in alternative care and non-educational day care settings and as a sentence for crime, but was prohibited in schools and in penal institutions. GIEACPC hoped that a specific recommendation would be made during the third review that Tonga clearly prohibit all corporal punishment of children, however light, in all settings, including the home and as a sentence of the courts.[34]

Administration of justice, including impunity, and the rule of law

21. CRIN underscored that there was no distinct juvenile justice law in Tonga and that the minimum age of criminal responsibility was seven.[35] It recommended that Tonga raise the minimum age.[36]

22. As in the context of the second review, JS1 mentioned the tragedy of the MV Princess Ashika, an inter-island Government-owned ferry operating in Tonga, which had sunk in August 2009. 74 passengers had lost their lives, including all women and children on board. It regretted that neither references to, nor recommendations about, this tragedy had been made during the previous review. It recommended that the recommendations highlighted in the report of the Royal Commission of Inquiry be implemented, and that the Government ensure that all victims have access to effective legal remedy.[37]

23. JS1 stated that there had been no attempts to revive legal aid support since the termination of the legal aid policy endorsed in 2006 to assist those needed legal advice and support in the aftermath of riots. It recommended that the Government revive legal aid support, particularly for the most vulnerable members of the community who lacked access to financial resources and technical legal advice based on their low income and economic status.[38]

Fundamental freedoms and the right to participate in public and political life[39]

24. JS1 stated that the Government's ongoing Public Sector Reform had seen a number of Ministries amalgamated into one Ministry without adequate consideration of the capacity necessary for managing different functions. The former Ministry of Information and Communications had been merged with other departments from the Ministries of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communication. According to JS1, it meant that the Freedom of Information Policy, launched in 2012 and still in a draft form, was competing with other priorities in such a large Ministry.[40] It recommended that the Government ensure that this policy be developed into a Freedom of Information Act.[41]

25. JS1 also stated that another recent set back was the controversial debate on the role of the Tonga Broadcasting Commission as a State enterprise expected to represent supporting views of the Government of the day. It stressed that its status should be independent from the Government, with freedom of information as one of its core values.[42]

Prohibition of all forms of slavery

26. JS1 stated that the Government, despite limited resources, had made modest progress in its law enforcement efforts to address human trafficking. Tonga prohibited all forms of human trafficking through its revised Transnational Crimes Act of 2007, which

defined human trafficking as including forced labour and forced prostitution. It recommended that Tonga consider revising the Transnational Crimes Act to protect victims of trafficking.[43]

3. Economic, social and cultural rights

Right to work and to just and favourable conditions of work

27. JS1 stated that there was no official system for supporting female workers, with the exception of maternity leave for public servants as per the Public Service Act. In the private sector, there was no legislation that ensured the welfare of female workers, including maternity leave. JS1 added that there was no minimal wage law. Over the last 30 years, the number of women in formal employment had increased almost fourfold. However, there had been little progress in the type of occupations in which women were engaged. Most women had been and were still employed in unskilled menial work or subordinate positions and therefore were paid at the lower end of the scale.[44]

28. JS1 noted that an employment relation bill had been discussed in the past 30 years, and that progress had been made since Tonga's recent ILO membership. In May 2017, a National Tripartite Committee consisting of the Government, employers and workers representatives was established. The Government had approved budget allocation during the current financial year to undertake final consultation on the Employment Relation Bill before submission to Parliament in 2018. JS1 recommended that Tonga enact this Bill to ensure the protection of workers welfare, including minimum wages.[45]

Right to health[46]

29. ADF International (ADFI) stated that resources should focus on improving conditions for pregnant women, women undergoing childbirth and postpartum women.[47] It noted that Tonga's maternal mortality ratio in 2015 was 124 maternal deaths per 100,000 live births, up from 75 per 100,000 in 1990. It stated that the high number of maternal deaths in Tonga was a pressing and urgent human rights concern. ADFI recommended that Tonga improve health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health; and focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds.[48]

30. JS1 mentioned the common practice that requires women to obtain the consent from their husbands prior to undertaking contraceptive medical interventions, such as tubal ligation. It recommended that Tonga revise the reproduction health policy to allow women to decide the course of contraception best for them.[49]

Right to education[50]

31. JS1 stated that the Ministry of Education had still not incorporated human rights and gender into the school syllabuses at all levels, in compliance with the Family Protection Act 2013. It recommended that Tonga undertake such incorporation.[51]

4. Rights of specific persons or groups

Women[52]

32. JS1 mentioned the report of the Royal Land Commission released in 2012, which recommended increasing women's rights to land, and more specifically for women to be allowed to register a town allotment. However, this recommendation did not allow women to register bush allotments, allegedly because only men attended to the bush for agricultural

purposes. Despite attempts to recommend amendments to afford women more access and rights to land, this was an area where women continued to be economically deprived and disempowered. JS1 recommended that Tonga review the Constitution and the Land Act to allow women to own land.[53]

33. JS1 welcomed the enactment of the Family Protection Act (2013), which aimed to provide greater protection for victims of domestic violence. The Act reportedly provided for increased power for the police to issue protection orders on the spot for a maximum of seven days; a legal requirement to inform the victims of their rights and the legal proceedings that would ensue; and the formation of a committee of key community stakeholders to discuss how best to monitor and evaluate the implementation of the Act.[54]

34. JS1 pointed out that the law on sexual offences defined rape as the non-consensual penetration of the penis into the vagina, and as such, any other type of sexual abuse was not regarded or recognized as an offence. JS1 recommended that Tonga review the criminal legislation to include the use of objects and anal and digital penetration as forms of rape, which currently were regarded as sexual assault and as such resulted in a lesser charge.[55]

35. The low participation of women across the decision-making spectrum was of concern to JS1. Whilst there had been an increase in female appointed chief executive officers to government ministries, the appointment of women to the highest decision-making positions remained, in most places, stagnant. JS1 stated that, for example, there had been no women appointed judges since the last review, no female cabinet members and only one female in the Parliament following a bye-election in June 2016. In recognition of the Sustainable Development Goal 5.5, Parliament had approved a motion for two reserved seats for women. However, JS1 expressed concern that such a number (representing seven percent of the total number of parliamentarians) was low compared to UN standards and best practices. JS1 called on Tonga to take temporary special measures with a view to increasing women's participation in Parliament and key decision-making positions. JS1 noted that in June 2017, the King had invested a female as a Law Lord, which was deemed to have been a big step forward for women.[56]

36. According to JS1, the Electoral Boundaries Commission Act 2010 under which the Kingdom had been divided into 17 electoral constituencies – with one seat allocated per constituency – did not favour women candidates as it made it more difficult for women to compete with male candidates. It was even more difficult when there was a lack of support from political parties for women candidates.[57]

Children[58]

37. JS1 noted that under the Births, Deaths and Marriage Registration Act 1962, children from the ages of 15 – 17 years old were allowed to marry with parental consent. It recommended that the relevant section of this Act be repealed with a view to raising the age to 18 years.[59]

38. JS1 stated that the increasing economic pressure on families at lower income level had forced the parents to engage their children in child labour activities. It mentioned children as young as six years old wandering the streets of the capital every night selling peanuts, or selling Tongan handicrafts. There was reportedly only one officer in the Ministry of Education, and there was an urgent need for more officers. According to JS1, the Ministry of Police was not addressing this issue as it considered that the children were not committing a crime. In this context, JS1 underscored that Tonga lacked legislation to protect children from child labour.[60]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions:

ADFI	ADF International, Geneva (Switzerland);
CRIN	The Child Rights International Network, London (United Kingdom of Great Britain and Northern Ireland);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London (United Kingdom of Great Britain and Northern Ireland).

Joint submission:

JS1	**Joint submission 1 submitted by**: Tonga Civil Society Organisations Human Rights Taskforce: the Civil Society Forum of Tonga, the Ma"a Fafine mo e Famili Inc, the Women and Children Crisis Centre, the Tonga Women National Congress, The Tonga Public Service Association, the Tonga Leiti's Association, the Talitha Project and other individual human rights defenders, Nukualofa (Tonga).

[2] The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights;
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;
CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

[3] For relevant recommendations, see A/HRC/23/4, paras. 79.1-79.21, 79.27-79.30, 81.16-18, and 82.1-82.3.

[4] JS1, p. 11.

[5] JS1, p. 11.

[6] JS1, p. 11.

[7] JS1, p. 9.

[8] JS1, p. 9.

[9] JS1, p. 8.

[10] JS1, p. 8.

[11] For relevant recommendations, see A/HRC/23/4, paras. 79.23, 79.24, 79.26, 79.49, 80.1, 81.1, 81.2, and 81.3.
[12] JS1, p. 2.
[13] JS1, p. 5.
[14] JS1, p. 3, 7 and 8.
[15] JS1, p. 9.
[16] JS1, p. 10.
[17] For relevant recommendations, see A/HRC/23/4, paras. 81.5-81.10.
[18] JS1, p. 3-4.
[19] JS1, p. 10-11.
[20] For relevant recommendations, see A/HRC/23/4, para. 79.31.
[21] JS1, p. 6.
[22] For relevant recommendations, see A/HRC/23/4, paras. 79.37, 79.38, 79.40, 79.42, 79.44-79.45, 80.3, 81.15, and 81.19-81.27.
[23] CRIN, p. 1.
[24] CRIN, p. 2.
[25] CRIN, p. 3.
[26] JS1, p. 6.
[27] CRIN, p. 1.
[28] CRIN, p. 3.
[29] CRIN, p. 2.
[30] CRIN, p. 2.
[31] CRIN, p. 3.
[32] JS1, p. 5.
[33] JS1, p. 7.
[34] GIEACPC, p. 1-3.
[35] CRIN, p. 1.
[36] CRIN, p. 3.
[37] JS1, p. 6-7.
[38] JS1, p. 7.
[39] For relevant recommendations, see A/HRC/23/4, paras. 79.22 and 79.46.
[40] JS1, p. 6.
[41] JS1, p. 7.
[42] JS1, p. 6.
[43] JS1, p. 9-10.
[44] JS1, p. 8-9.
[45] JS1, p. 9.
[46] For relevant recommendations, see A/HRC/23/4, para. 79.48.
[47] ADFI, p. 2-3.
[48] ADFI, p. 3-4.
[49] JS1, p. 9-10.
[50] For relevant recommendations, see A/HRC/23/4, paras. 79.50-79.52.
[51] JS1, p. 10.
[52] For relevant recommendations, see A/HRC/23/4, paras. 79.32-79.36, 79.39, 79.41, 79.43, 80.2, 81.4, 81.11-14, and 82.4.
[53] JS1, p. 9-10.
[54] JS1, p. 3.
[55] JS1, p. 9-10.
[56] JS1, p. 3.
[57] JS1, p. 4.
[58] For relevant recommendations, see A/HRC/23/4, para. 81.28.
[59] JS1, p. 4-5.
[60] JS1, p. 10.